

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3841

May 31, 2011

MB
Pol. Editor
Fairness Doctrine
667

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
Room: 8-B201
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

Although the FCC has previously ruled that it would cease enforcement of the Fairness Doctrine and repeal the political-editorial and personal-attack rules, it has neglected to take them off the books. We write to ask you to finish the job and strike from the FCC's regulations the rules codified at 47 C.F.R. §§ 73.1910, 76.209, 76.1612, and 76.1613.

The FCC concluded in 1987 that the Fairness Doctrine chilled free speech and had been used to intimidate broadcasters who criticized government policy. According to the FCC's analysis, the growth of the media market had rendered the doctrine unnecessary and—based on its intrusion on the First Amendment rights of broadcasters—unconstitutional. The FCC ruled, therefore, that it would cease enforcement. *Syracuse Peace Council v. Television Station WTVH, Syracuse, NY*; Fairness Doctrine, 52 Fed. Reg. 31,768 (Aug. 24, 1987). The D.C. Circuit later upheld the FCC's decision that enforcing the Fairness Doctrine was not in the public interest. *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989).

Ten years later, the D.C. Circuit required the FCC to review and justify its political-editorial and personal-attack rules in part because they "interfere with the editorial judgment of professional journalists and entangle the government in day-to-day operations of the media." *Radio-Television News Dirs. Ass'n v. FCC*, 184 F.3d 872 (D.C. Cir. 1999). The D.C. Circuit vacated those rules the following year. *Radio-Television News Dirs. Ass'n v. FCC*, 229 F.3d 269 (D.C. Cir. 2000). In response, the FCC repealed the political-editorial and personal-attack rules. *Repeal or Modification of the Personal Attack and Political Editorial Rules*, 65 Fed. Reg. 66,643 (Nov. 7, 2000).

Despite the FCC's determination not to enforce the Fairness Doctrine, Commissioner McDowell recently discovered that it still remains in the Code of Federal Regulations. Further

Letter to the Honorable Julius Genachowski

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research has revealed that the political-editorial and personal-attack rules also remain intact despite the FCC's decision to repeal them. The media marketplace is more diverse and competitive today than it was ten years ago when the D.C. Circuit struck down the Commission's political-editorial and personal-attack rules. The difference is even more stark when compared to the market twenty years ago when the Commission concluded that the Fairness Doctrine was unconstitutional.

You wrote to Chairman Walden on July 24, 2009, that you "do not support reinstatement of the Fairness Doctrine," that you "believe strongly in the First Amendment," and that you "do not think that the FCC should be involved in the censorship of content based on political speech or opinion." We agree that the Constitution places a special duty on Congress and the federal government to respect the freedom of broadcasters and cable operators to speak freely without fear of reprisal or government sanction.

President Obama's recent Executive Order has asked agencies to remove unwarranted regulations from their rolls. President's Memorandum for the Heads of Executive Departments and Agencies, "Regulatory Flexibility, Small Business, and Job Creation" (76 Fed. Reg. 3827 (January 21, 2011)). Although that order does not apply to the FCC, you stated at our May 13, 2011, Subcommittee on Communications and Technology hearing that you have instructed Commission staff to follow its direction. Statement of Chairman Julius Genachowski, Hearing on "FCC Process Reform" Before the Subcommittee on Communications and Technology (May 13, 2011). The Fairness Doctrine, political-editorial, and personal-attack rules would seem like an easy place to start since the FCC has already abandoned them based on principles you say you continue to support.

Accordingly, we ask you to remove the Fairness Doctrine and the political-editorial and personal-attack rules from the Code of Federal Regulations as soon as possible. Please confirm in writing no later than the close of business June 3, 2011, that you will do so and include an estimate of how long it will take. If you have any questions, don't hesitate to contact Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



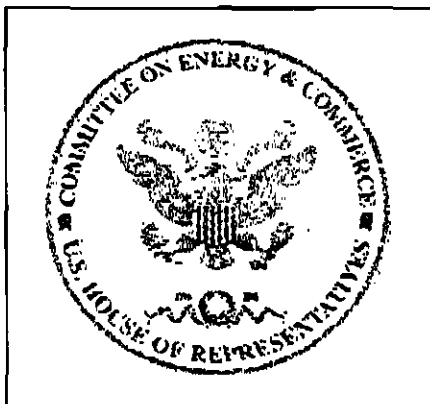
Greg Walden
Chairman

Subcommittee on Communications and Technology

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Anna G. Eshoo, Ranking Member
Subcommittee on Communications and Technology

Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn



***Committee on Energy and Commerce
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U.S. House of Representatives

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Phone: (202) 225-2927

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To: Ms. Terri Glaze, Director of Legislative Affairs, Federal Communications Commission for
Chairman Julius Genachowski, Federal Communications Commission

From: Rep. Fred Upton, Chairman, Committee on Energy and Commerce

Fax: (202) 418-2806

Date: March 29, 2011

Phone:

Pages: 2 (Including cover)

Notes: Detail request letter



FEDERAL COMMUNICATIONS COMMISSION

June 6, 2011

JULIUS GENACHOWSKI
CHAIRMAN

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

As I stated at my confirmation hearing and on numerous subsequent occasions, I oppose the Fairness Doctrine, which has been a dead letter at the Commission for more than two decades. In my view, the Fairness Doctrine holds the potential to chill free speech and the free flow of ideas and, accordingly, was properly abandoned. The General Counsel has advised me that the FCC's abandonment of the Fairness Doctrine had the legal effect that the Commission intended, and that the Fairness Doctrine is unenforceable without an affirmative rulemaking proceeding and vote of the Commission to revive it. I have publicly stated many times that I would not initiate any effort to reinstate the Fairness Doctrine.

As your note indicates, I have initiated a significant effort within the Agency to identify and eliminate antiquated and outmoded rules that unnecessarily burden business, stifle investment and innovation, or confuse consumers and licensees. To this end, as I testified during the Subcommittee's May 13th hearing, the Commission already has eliminated 49 outdated regulations. We also have targeted 25 sets of unnecessary data collections for elimination.

These review efforts are ongoing and include a directive to the Commission's staff to conduct a full analysis of current regulations within their areas of responsibility. To date, this undertaking has focused on rules that still actively govern licensees and thus have a practical affect. I expect that staff will also recommend the deletion of 47 C.F.R. §§ 73.1910, 76.209, 76.1612 and 76.1613, pertaining to the Fairness Doctrine and related provisions. I fully support deleting the Fairness Doctrine and related provisions from the Code of Federal Regulations, so that there can be no mistake that what has been a dead letter is truly dead. I look forward to effectuating this change when acting on the staff's recommendations and anticipate that the process can be completed in the near future.

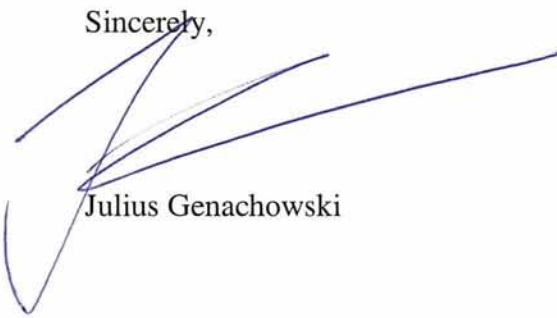
As part of our work to eliminate unnecessary rules and regulations, the Commission's Office of General Counsel reviewed existing statutory provisions to determine if any appear appropriate for repeal or revision. For your consideration, I have attached a list of possible

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amendments to the Communications Act that would remove these statutory mandates, which appear unnecessary.

Please feel free to contact me if you have additional questions or concerns.

Sincerely,



Julius Genachowski

Enclosure



FEDERAL COMMUNICATIONS COMMISSION

June 6, 2011

JULIUS GENACHOWSKI
CHAIRMAN

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Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
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Sincerely,



Julius Genachowski

Enclosure

**Potential Conforming and Updating Amendments to Communications Act
(Compiled as of June 3, 2011)**

1. [47 U.S.C. § 154\(g\)\(2\)](#) – The provisions of this paragraph expired in 1994.
2. [47 U.S.C. § 156\(a\)-\(c\)](#) – Obsolete funding authorization.
3. [47 U.S.C. § 158\(g\)](#) – Outdated application fee schedule. Proposed Amendment would bring this section into conformity with section 9 regulatory fee process, under which the Commission proposes fees yearly and adopts rules reflecting those fees. Failure to update the schedule since 1991 has resulted in the inequitable collection of fees. Services not in existence in 1991 are not obligated to pay for their application processing, while other services must bear an unfair share of the burden.
4. [47 U.S.C. § 159\(b\)\(1\)\(A\)](#) – Outdated language refers to nonexistent bureaus and should be updated to provide flexibility during Commission reorganizations. Suggested language amendment would delete specific bureaus from text and instead refer to “the Commission’s Bureaus and Offices.”
5. [47 U.S.C. § 204\(a\)\(2\)\(B\)](#) – This section refers to action taken within a specified time of enactment (November 3, 1988) and is no longer relevant.
6. [47 U.S.C. § 208\(b\)\(2\)](#) – This section refers to action taken within a specified time of enactment (November 3, 1988) and is no longer relevant.
7. [47 U.S.C. § 275\(a\)\(1\)](#) – This provision restricted Bell companies and their affiliates from providing alarm monitoring services before a date five years after February 8, 1996. This section is no longer relevant..
8. [47 U.S.C. § 309\(j\)\(8\)\(E\)\(iii\)](#) – This provision required a one-time transfer of funds on September 30, 2009. This section is no longer relevant.
9. [47 U.S.C. § 351\(a\)\(2\)](#), [352\(d\)](#), [354](#), [354\(h\)](#), and [354\(i\)](#) – References to radio direction finding apparatus (RDFA) should be removed. RDFA is an obsolete technology that has been replaced by the Global Maritime Distress Safety System (GMDSS). RDFA equipment is no longer available.
10. [47 U.S.C. § 391](#) – Obsolete funding authorization referencing fiscal years 1992, 1993 and 1994.
11. [47 U.S.C. § 394\(h\)](#) – Obsolete funding authorization referencing fiscal years 1992, 1993 and 1994.
- 12.
13. [47 U.S.C. § 395\(k\)](#) – Obsolete funding authorization referencing fiscal years 1979, 1980 and 1981.

14. 47 U.S.C. § 396(k)(1)(B) – Obsolete funding authorization referencing fiscal years 1979, 1980 and 1981.
15. 47 U.S.C. § 561 – In United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000), the Supreme Court struck down this section as violating of the First Amendment.